

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

KAMI KING,

Plaintiff and Respondent,

v.

CINDY PON, et al.,

Defendants and Appellants.

A145085

(San Francisco County  
Super. Ct. No. CGC-15-543677)

Defendants Cindy Pon and Angela Pon appeal the trial court's order denying their special motion to strike pursuant to the anti-SLAPP statute (Code Civ. Proc., § 425.16) and awarding fees and costs to plaintiff Kami King. Defendants' sole challenge on appeal is plaintiff's service of her opposition papers was defective and the trial court should have stricken them or continued the hearing. We affirm.

**BACKGROUND<sup>1</sup>**

Defendants filed their motion in March 2015, with a hearing date of April 9. Plaintiff filed an opposition and supporting documents on March 26. The proof of service filed with plaintiff's opposition papers indicated plaintiff's counsel served defendants' counsel the same day by emailing him the documents.

On April 6, 2015, defendants filed a document requesting the court strike plaintiff's opposition or, alternatively, continue the hearing so defendants could file a

---

<sup>1</sup> Because defendants' challenge is purely procedural, we need not recite background facts relating to plaintiff's complaint or the substance of defendants' anti-SLAPP motion.

reply. Defendants argued the opposition papers were not properly served because “[t]he parties do not have an agreement to accept electronic service” pursuant to California Rules of Court rule 2.251.<sup>2</sup> Defendants’ counsel submitted a declaration stating: “On April 6, 2015, I, not having received an opposition to defendant’s Anti-SLAPP motion decided to review the court’s docket to see if one had been filed. At that time, I learned that plaintiff had in fact filed opposing papers.” After reviewing the proof of service, defendants’ counsel “reviewed emails from plaintiff’s counsel and did in fact locate a March 26, 2015, email communication with the opposing papers attached in a .pdf format. At the time the email was received, I believed it was a courtesy service and the copies would be received in the mail. Thus, I did not print out the attachments or deem it service.” Defendants’ counsel further stated, “It is now too late for defendants to file a timely reply. In addition, there is insufficient time for me and defendants to draft, file and serve a meaningful reply.”

Counsel for both parties appeared at the hearing on April 9, 2015.<sup>3</sup> In a written order issued after the hearing, the trial court denied defendants’ anti-SLAPP motion and awarded fees and costs to plaintiff. The order did not address defendants’ argument that the opposition was not properly served.

## DISCUSSION

Rule 2.251(c)(2) provides, with exceptions not applicable here, “a party that is required to file documents electronically in an action must also serve documents and accept service of documents electronically from all other parties . . . .” The Superior Court of San Francisco County, Local Rules, former rule 2.10 (Jan. 1, 2015 revision; hereafter Local Rule 2.10) requires, in general civil cases such as the instant action, that all documents be electronically filed. (Local Rule 2.10(A), (H)(1).)<sup>4</sup> Accordingly,

---

<sup>2</sup> All undesignated rule references are to the California Rules of Court.

<sup>3</sup> Defendants elected to proceed on appeal without a record of the hearing.

<sup>4</sup> In compliance with this Local Rule, defendants electronically filed their anti-SLAPP motion papers.

defendants were obligated to accept electronic service under Rule 2.251(c)(2) and they do not argue to the contrary on appeal.

Instead, defendants point to provisions of Local Rule 2.10 requiring a party to “E-Serve” all electronically filed documents. (Local Rule 2.10(P)(1).)<sup>5</sup> Local Rule 2.10 defines “E-Service” as “Electronic transmission of an original document to all other designated recipients *via the Vendor’s system*.” (Local Rule 2.10(C)(10), italics added.) “Vendor” is defined as “A private entity approved by the Court to provide electronic filing and service.” (Local Rule 2.10(C)(8).) Plaintiff’s counsel electronically served the opposition papers himself, rather than doing so through the superior court’s vendor system. Defendants argue this omission—the failure to electronically serve the papers through the third-party vendor system—violated Local Rule 2.10 and constituted “an irregularity in the proceedings” that prejudiced them. We conclude defendants have failed to demonstrate prejudice from any procedural irregularity.<sup>6</sup>

“ ‘Procedural defects which do not affect the substantial rights of the parties do not constitute reversible error.’ ” (*Southern California Gas Co. v. Flannery* (2014) 232 Cal.App.4th 477, 491–492.) “In order to obtain a reversal based upon such a procedural flaw, the appellant must demonstrate not only that the notice [or service] was defective, but that he or she was *prejudiced*.” (*Reedy v. Bussell* (2007) 148 Cal.App.4th 1272, 1289.) Defendants’ counsel admitted that he received the opposition papers emailed from plaintiff’s counsel, but “believed it was a courtesy service and the copies would be received *in the mail*.” (Italics added.) Counsel apparently then forgot about the opposition until three days before the hearing when he reviewed the court’s docket “to see if one had been filed.”

---

<sup>5</sup> “A court may require parties to serve documents electronically in specified actions by local rule . . . .” (Rule 2.251(c)(1); see also Code Civ. Proc., § 1010.6.)

<sup>6</sup> Because we resolve the appeal on this ground, we need not reach plaintiff’s argument that Local Rule 2.10 is inconsistent with rule 2.251. (See Gov. Code, § 68070, subd. (a) [“Every court may make rules for its own government and the government of its officers not inconsistent with law or with the rules adopted and prescribed by the Judicial Council.”].)

Defendants have failed to show prejudice for two reasons. First, defendants' counsel's declaration clearly shows he was expecting to receive service copies of the opposition papers by mail. Yet defendants now concede electronic service was proper and argue only that such service must be through a third-party vendor. Defendants have not demonstrated their counsel would have recognized electronic service from a vendor as constituting service, instead of believing it did not constitute service and waiting for mailed service copies as he did with the email from plaintiff's counsel. Second, defendants fail to identify, either here or below, any evidence or arguments they would have submitted in response to plaintiff's opposition had they been electronically served by a third-party vendor (and recognized the service as such). Defendants have provided us with no basis to conclude that additional time would have changed the outcome below, and therefore fail to demonstrate prejudice. (*Southern California Gas Co. v. Flannery*, *supra*, 232 Cal.App.4th at p. 492 ["On appeal, [appellant] does not identify any additional arguments that would have persuaded the court to deny the [challenged motion] if he had had the opportunity to make those additional arguments. Accordingly, [appellant] fails to demonstrate reversible error."].)

#### DISPOSITION

The order is affirmed. Plaintiff is awarded her costs on appeal.

---

SIMONS, Acting P.J.

We concur.

---

NEEDHAM, J.

---

BRUINIERS, J.

(A145085)